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9 COUNTY OF ALAMEDA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

LISAMARIA MARTINEZ,
Plaintiff,
v.
COUNTY OF ALAMEDA,
Defendant.

Case No. 20-cv-06570-TSH

**DEFENDANT COUNTY OF ALAMEDA'S
OBJECTION AND STATEMENT OF
CONTROVERTING FACTS IN RESPONSE
TO PLAINTIFF'S SUPPLEMENTAL
STATEMENT OF UNDISPUTED FACTS
REGARDING PLAINTIFF'S SUR REPLY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT ON DECLARATORY RELIEF**

DATE: February 9, 2023
TIME: 10:00 a.m.
DEPT: Courtroom G (15th Floor)
JUDGE: Hon. Thomas S. Hixson

1 Defendant County of Alameda (“County”) hereby submits this Objection and Statement of
2 Controverting Facts in Response to Plaintiff Lisamaria Martinez’s (“Plaintiff”) Supplemental Statement of
3 Undisputed Facts regarding Plaintiff’s Sur Reply in support of Motion for Summary Judgment on Declaratory
4 Relief, with references to evidence.

OBJECTIONS TO PLAINTIFF'S EVIDENCE

I. Declaration of Karen McCall

7 The County objects to the entirety of the Declaration of Karen McCall on the ground Plaintiff
8 previously stipulated to waive expert evidence in this matter and now seeks to assert such evidence after the
9 fact. See Dkt. 41.

The County objects to the entirety of the Declaration of Karen McCall on the ground it is irrelevant, as well as confusing and misleading, and calls for a very incorrect legal conclusion, where it ignores that the CRO offers a reasonable modification in the form of allowing patrons to file FBNS's by mail, and relies on a non-existent standard under the ADA concerning "independent completion" with respect to the electronic FBNS on the kiosk reserved for persons with disabilities in the CRO. There is no legal standard under the ADA whereby a modification is only reasonable if it allows a disabled person to act completely independently, and Plaintiff has cited no authority suggesting otherwise. Indeed, she specifically demands scribe services in this matter and argues that scribe services constitute a reasonable modification, but scribe services inherently require human assistance and do not allow for "independent completion" of the FBNS. And, even if the electronic version of the FBNS on the kiosk in the CRO cannot be completed entirely independently by a person with a vision disability using the JAWS screen access software that is installed on that kiosk, that is irrelevant and does not render the FBNS on the kiosk "inaccessible" where CRO staff members are authorized to and will assist the person with a vision disability in using the kiosk. This would actually require less human assistance, and provide more independence, to the disabled person where the disabled individual would be the one inputting the requisite information into the FBNS, with any necessary guidance and sighted assistance from CRO staff.

26 The County objects to the entirety of the Declaration of Karen McCall on the ground Ms. McCall has
27 not used the kiosk in the CRO equipped with screen access software and has not attempted to complete the
28 FBNS installed on the kiosk, despite that kiosk being available to all disabled members of the public during

1 business hours. As such, Ms. McCall lacks personal knowledge to state that the FBNS on the CRO's kiosk is
 2 inaccessible and her opinion is irrelevant. Federal Rules of Evid. 401, 602, 701, 901.

3 Paragraphs 6 and 7 – Vague and ambiguous, call for speculation, call for legal conclusions, and lack
 4 foundation. Federal Rules of Evid. 701, 702, 703, 800, 801, 901; Fed. R. Civ. P. 56(e).

5 Exhibit D – Hearsay, lacks foundation. Federal Rules of Evid. 801-802, 901.

6 **II. Declaration of Lucia Greco**

7 The County objects to the entirety of the Declaration of Lucia Greco on the ground it is irrelevant,
 8 confusing and misleading. The fact one CRO employee allegedly violated the CRO's policy (prohibiting
 9 employees from completing or altering forms for patrons that are filed or recorded in the CRO) has no bearing
 10 on whether the CRO violated the ADA on the day of the incident, whether the CRO is obligated to provide
 11 scribe services under the ADA, or whether the CRO provides reasonable modifications in the form of allowing
 12 patrons to file the FBNS by mail and offering disabled patrons the opportunity to complete an FBNS on a kiosk
 13 in the CRO using JAWS screen-access software and/or with the guidance and sighted assistance of CRO staff.
 14 Federal Rules of Evid. 401, 403.

15 Paragraph 5-10 – Hearsay. Federal Rules of Evid. 801-802.

16 Paragraph 13 – Vague and ambiguous, improper lay opinion, calls for speculation, lacks foundation,
 17 calls for a legal conclusion. Federal Rules of Evid. 701, 703, 901. Further, Ms. Greco has not used the kiosk in
 18 the CRO equipped with JAWS screen access software and has not attempted to complete the FBNS installed
 19 on the kiosk. As such, Ms. Greco lacks personal knowledge to state that the FBNS on the CRO's kiosk is
 20 inaccessible and her lay opinion is irrelevant. Federal Rules of Evid. 401, 602, 701, 901.

21 **III. Declaration of Steven Clark**

22 The County objects to the entirety of the Declaration of Steven Clark on the ground Plaintiff previously
 23 stipulated to waive expert evidence in this matter and now seeks to assert such evidence after the fact. See Dkt.
 24 41.

25 The County objects to the entirety of the Declaration of Steven Clark on the ground it is irrelevant, as
 26 well as confusing and misleading, and calls for a very incorrect legal conclusion, where it ignores that the CRO
 27 offers a reasonable modification in the form of allowing patrons to file FBNS's by mail, and relies on a non-
 28 existent standard under the ADA concerning “independent completion” with respect to the electronic FBNS on

1 the kiosk reserved for persons with disabilities in the CRO. There is no legal standard under the ADA whereby
2 a modification is only reasonable if it allows a disabled person to act completely independently, and Plaintiff
3 has cited no authority suggesting otherwise. Indeed, she specifically demands scribe services in this matter and
4 argues that scribe services constitute a reasonable modification, but scribe services inherently require human
5 assistance and do not allow for “independent completion” of the FBNS. And, even if the electronic version of
6 the FBNS on the kiosk in the CRO cannot be completed entirely independently by a person with a vision
7 disability using the JAWS screen access software that is installed on that kiosk, that is irrelevant and does not
8 render the FBNS on the kiosk “inaccessible” where CRO staff members are authorized to and will assist the
9 person with a vision disability in using the kiosk. This would actually require less human assistance, and
10 provide more independence, to the disabled person where the disabled individual would be the one inputting
11 the requisite information into the FBNS, with any necessary guidance and sighted assistance from CRO staff.

12 The County objects to the entirety of the Declaration of Steven Clark on the ground Mr. Clark has not
13 used the kiosk in the CRO equipped with screen access software and has not attempted to complete the FBNS
14 installed on the kiosk, despite that kiosk being available to all disabled members of the public during business
15 hours. As such, Mr. Clark lacks personal knowledge to state that the FBNS on the CRO’s kiosk is inaccessible
16 and his opinion is irrelevant. Federal Rules of Evid. 401, 602, 701, 901.

17 Exhibit B – Hearsay, lacks foundation. Federal Rules of Evid. 801-802, 901.

18 Paragraphs 7, 8 - Vague and ambiguous, call for speculation, call for a legal conclusion, lack
19 foundation. Federal Rules of Evid. 701, 703, 901.

20 **STATEMENT OF CONTROVERTING FACTS**

21 43. The FBNS form in PDF format showing a “rev date” of 10/18, made available to the public online, and
22 relied on by Ms. Martinez on or around her visit to the CRO on March 29, 2019 was not accessible under any
23 professional standard and could not be independently completed by a blind person who needs non-visual access
24 through screen reader technology such as JAWS. (Decl. of Karen McCall in Support of Pl.’s Statement of
25 Facts and Oppo to Def’s Mot. For Summ. J. on Declar. Relief (“McCall Expert Decl.”), Exh. D at
26 PL_EXPERT0003, 0013.)

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1 **Defendants' Response:**

2 43. Disputed but irrelevant. The County notes that while Plaintiff now seeks to discredit the ability
3 to complete the electronic FBNS using JAWS, she testified otherwise in her deposition. She testified that prior
4 to her March 29, 2019, visit to the CRO, which is the subject of this action, she completed the FBNS on her
5 computer at home using JAWS, and that the only aspect of the form that she could recall required human
6 assistance was signing the form. Further, “independent completion” is not the applicable standard under the
7 ADA, as exemplified by the entire basis for this action – Plaintiff’s demand for scribe services. Scribe services
8 would not entail “independent completion” because Plaintiff is explicitly demanding that someone else fill out
9 the FBNS for her. Plaintiff cannot demand scribe services, which is inherently dependent on another individual
10 transcribing information for her, and then reject electronic assistance on the ground it does not allow for
11 “independent completion,” particularly where she does not cite any authority suggesting that the ADA employs
12 such a standard. It does not. Further, while the County disagrees with Plaintiff that the FBNS on the CRO’s
13 kiosk is inaccessible using JAWS, that is ultimately irrelevant where CRO employees are authorized to and will
14 assist individuals using the kiosk.

15 For example, if JAWS is unable to read any text on the FBNS, a CRO employee will read that text to
16 the disabled individual. CRO staff members will also move the mouse/cursor to the correct line or checkbox
17 such that the disabled individual can then check the box or input the required information. In addition, CRO
18 staff members will read the information back to the individual to ensure it is accurate, and otherwise ensure the
19 FBNS has been completed properly. Further, if a disabled person would simply prefer to rely on a CRO staff
20 member’s guidance and assistance when using the kiosk, rather than using JAWS, a CRO staff member will
21 read the entire FBNS to the disabled individual, line by line, and ensure the individual is inputting the
22 information in the correct places in the FBNS. This exact situation occurred in July 2022, before the CRO had
23 obtained a license to use JAWS, when a person with a vision disability demanded scribe services relative to an
24 FBNS. She was instead able to complete the FBNS herself on the kiosk, with Mr. Yankee’s guidance and
25 sighted assistance.

26 Indeed, the only difference between this arrangement and the scribe services Plaintiff demands is that,
27 under this arrangement, the CRO’s employees would not be personally/physically completing the FBNS for the
28

1 individual with a vision disability, and would thus be avoiding the significant potential liability that would arise
2 from the provision of scribe services.

3 Finally, Plaintiff's Fact No. 43 is not material or relevant where the communication between the CRO's
4 clerks and Plaintiff on the day of the incident was effective such that no accommodation was required, and
5 because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
6 modification in the form of allowing patrons to file the FBNS by mail. See Dkt. 48-2 (County's Separate
7 Statement of Uncontroverted Facts in support of Motion for Summary Judgment, or in the alternative, Partial
8 Summary Judgment), Facts 8-9, 27-28, 31 49-51; Dkt. 63-1 (County's Supplemental Separate Statement of
9 Uncontroverted Facts in support of Opposition to Plaintiff's Motion for Summary Judgment on Declaratory
10 Relief and County's Motion for Summary Judgment on Declaratory Relief), Facts 7-14; Supplemental
11 Declaration of Matt Yankee in support of County's Opposition to Plaintiff's Sur Reply in support of Motion for
12 Summary Judgment on Declaratory Relief ("Supp. Yankee Decl."), ¶¶ 3-7.

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14 44. The FBNS form in PDF format showing a "rev date" of 4/21 and made available to the public online
15 was not accessible under any professional standard and could not be independently completed by a blind
16 person who needs non-visual access through screen reader technology such as JAWS. (McCall Expert Decl.,
17 Exh. D at PL_EXPERT0003, 0013.)

18 **Defendants' Response:**

19 44. Disputed but irrelevant. The County notes that while Plaintiff now seeks to discredit the ability
20 to complete the electronic FBNS using JAWS, she testified otherwise in her deposition. She testified that prior
21 to her March 29, 2019, visit to the CRO, which is the subject of this action, she completed the FBNS on her
22 computer at home using JAWS, and that the only aspect of the form that she could recall required human
23 assistance was signing the form. Further, "independent completion" is not the applicable standard under the
24 ADA, as exemplified by the entire basis for this action – Plaintiff's demand for scribe services. Scribe services
25 would not entail "independent completion" because Plaintiff is explicitly demanding that someone else fill out
26 the FBNS for her. Plaintiff cannot demand scribe services, which is inherently dependent on another individual
27 transcribing information for her, and then reject electronic assistance on the ground it does not allow for
28 "independent completion," particularly where she does not cite any authority suggesting that the ADA employs

1 such a standard. It does not. Further, while the County disagrees with Plaintiff that the FBNS on the CRO's
2 kiosk is inaccessible using JAWS, that is ultimately irrelevant where CRO employees are authorized to and will
3 assist individuals using the kiosk.

4 For example, if JAWS is unable to read any text on the FBNS, a CRO employee will read that text to
5 the disabled individual. CRO staff members will also move the mouse/cursor to the correct line or checkbox
6 such that the disabled individual can then check the box or input the required information. In addition, CRO
7 staff members will read the information back to the individual to ensure it is accurate, and otherwise ensure the
8 FBNS has been completed properly. Further, if a disabled person would simply prefer to rely on a CRO staff
9 member's guidance and assistance when using the kiosk, rather than using JAWS, a CRO staff member will
10 read the entire FBNS to the disabled individual, line by line, and ensure the individual is inputting the
11 information in the correct places in the FBNS. This exact situation occurred in July 2022, before the CRO had
12 obtained a license to use JAWS, when a person with a vision disability demanded scribe services relative to an
13 FBNS. She was instead able to complete the FBNS herself on the kiosk, with Mr. Yankee's guidance and
14 sighted assistance.

15 Indeed, the only difference between this arrangement and the scribe services Plaintiff demands is that,
16 under this arrangement, the CRO's employees would not be personally/physically completing the FBNS for the
17 individual with a vision disability, and would thus be avoiding the significant potential liability that would arise
18 from the provision of scribe services.

19 Finally, Plaintiff's Fact No. 44 is not material or relevant where the communication between the CRO's
20 clerks and Plaintiff on the day of the incident was effective such that no accommodation was required, and
21 because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
22 modification in the form of allowing patrons to file the FBNS by mail. See Dkt. 48-2, Facts 8-9, 27-28, 31, 49-
23 51; Dkt. 63-1, Facts 7-14; Supp. Yankee Dec., ¶¶ 3-7.

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25 45. The most current FBNS form in PDF format showing a "rev date" of 11/22 and made available to the
26 public online is not accessible under any professional standard, cannot be independently completed by a blind
27 person who needs non-visual access through screen reader technology such as JAWS, and represents a
28 degradation on accessibility when compared to the previous one with a "rev date" of 4/21. (McCall Expert

1 Decl., Exh. D at PL_EXPERT0003, 0013; Decl. of Steven Clark in Support of Pl.’s Statement of Facts and
2 Oppo to Def.’s Mot. For Summ. J. on Declar. Relief (“Clark Expert Decl.”), Exh. B at PL_EXPERT0027); *see*
3 also Def.’s Suppl. Statement of Facts in Support of Motion for Summary Judgment ¶ 9, ECF No. 63-1.)

4 **Defendants’ Response:**

5 45. Disputed but irrelevant. The County notes that while Plaintiff now seeks to discredit the ability
6 to complete the electronic FBNS using JAWS, she testified otherwise in her deposition. She testified that prior
7 to her March 29, 2019, visit to the CRO, which is the subject of this action, she completed the FBNS on her
8 computer at home using JAWS, and that the only aspect of the form that she could recall required human
9 assistance was signing the form. Further, “independent completion” is not the applicable standard under the
10 ADA, as exemplified by the entire basis for this action – Plaintiff’s demand for scribe services. Scribe services
11 would not entail “independent completion” because Plaintiff is explicitly demanding that someone else fill out
12 the FBNS for her. Plaintiff cannot demand scribe services, which is inherently dependent on another individual
13 transcribing information for her, and then reject electronic assistance on the ground it does not allow for
14 “independent completion,” particularly where she does not cite any authority suggesting that the ADA employs
15 such a standard. It does not. Further, while the County disagrees with Plaintiff that the FBNS on the CRO’s
16 kiosk is inaccessible using JAWS, that is ultimately irrelevant where CRO employees are authorized to and will
17 assist individuals using the kiosk.

18 For example, if JAWS is unable to read any text on the FBNS, a CRO employee will read that text to
19 the disabled individual. CRO staff members will also move the mouse/cursor to the correct line or checkbox
20 such that the disabled individual can then check the box or input the required information. In addition, CRO
21 staff members will read the information back to the individual to ensure it is accurate, and otherwise ensure the
22 FBNS has been completed properly. Further, if a disabled person would simply prefer to rely on a CRO staff
23 member’s guidance and assistance when using the kiosk, rather than using JAWS, a CRO staff member will
24 read the entire FBNS to the disabled individual, line by line, and ensure the individual is inputting the
25 information in the correct places in the FBNS. This exact situation occurred in July 2022, before the CRO had
26 obtained a license to use JAWS, when a person with a vision disability demanded scribe services relative to an
27 FBNS. She was instead able to complete the FBNS herself on the kiosk, with Mr. Yankee’s guidance and
28 sighted assistance.

1 Indeed, the only difference between this arrangement and the scribe services Plaintiff demands is that,
2 under this arrangement, the CRO's employees would not be personally/physically completing the FBNS for the
3 individual with a vision disability, and would thus be avoiding the significant potential liability that would arise
4 from the provision of scribe services.

5 Finally, Plaintiff's Fact No. 45 is not material or relevant where the communication between the CRO's
6 clerks and Plaintiff on the day of the incident was effective such that no accommodation was required, and
7 because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
8 modification in the form of allowing patrons to file the FBNS by mail. See Dkt. 48-2, Facts 8-9, 27-28, 31, 49-
9 51; Dkt. 63-1, Facts 7-14; Supp. Yankee Dec., ¶¶ 3-7.

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11 46. The most current electronic FBNS form available online in PDF format has instructions that could be
12 read at least in part by a screen reader, but the form fields could not be completed or filled out with a screen
13 reader. (Decl. of Lucia Greco in Support of Pl.'s Statement of Facts and Oppo. To Def.'s Mot. For Summ. J.
14 on Declar. Relief ("Greco Decl.") ¶¶ 12-13.)

15 Defendants' Response:

16 46. Disputed but irrelevant. The County notes that while Plaintiff now seeks to discredit the ability
17 to complete the electronic FBNS using JAWS, she testified otherwise in her deposition. She testified that prior
18 to her March 29, 2019, visit to the CRO, which is the subject of this action, she completed the FBNS on her
19 computer at home using JAWS, and that the only aspect of the form that she could recall required human
20 assistance was signing the form. Further, "independent completion" is not the applicable standard under the
21 ADA, as exemplified by the entire basis for this action – Plaintiff's demand for scribe services. Scribe services
22 would not entail "independent completion" because Plaintiff is explicitly demanding that someone else fill out
23 the FBNS for her. Plaintiff cannot demand scribe services, which is inherently dependent on another individual
24 transcribing information for her, and then reject electronic assistance on the ground it does not allow for
25 "independent completion," particularly where she does not cite any authority suggesting that the ADA employs
26 such a standard. It does not. Further, while the County disagrees with Plaintiff that the FBNS on the CRO's
27 kiosk is inaccessible using JAWS, that is ultimately irrelevant where CRO employees are authorized to and will
28 assist individuals using the kiosk.

1 For example, if JAWS is unable to read any text on the FBNS, a CRO employee will read that text to
2 the disabled individual. CRO staff members will also move the mouse/cursor to the correct line or checkbox
3 such that the disabled individual can then check the box or input the required information. In addition, CRO
4 staff members will read the information back to the individual to ensure it is accurate, and otherwise ensure the
5 FBNS has been completed properly. Further, if a disabled person would simply prefer to rely on a CRO staff
6 member's guidance and assistance when using the kiosk, rather than using JAWS, a CRO staff member will
7 read the entire FBNS to the disabled individual, line by line, and ensure the individual is inputting the
8 information in the correct places in the FBNS. This exact situation occurred in July 2022, before the CRO had
9 obtained a license to use JAWS, when a person with a vision disability demanded scribe services relative to an
10 FBNS. She was instead able to complete the FBNS herself on the kiosk, with Mr. Yankee's guidance and
11 sighted assistance.

12 Indeed, the only difference between this arrangement and the scribe services Plaintiff demands is that,
13 under this arrangement, the CRO's employees would not be personally/physically completing the FBNS for the
14 individual with a vision disability, and would thus be avoiding the significant potential liability that would arise
15 from the provision of scribe services.

16 Finally, Plaintiff's Fact No. 46 is not material or relevant where the communication between the CRO's
17 clerks and Plaintiff on the day of the incident was effective such that no accommodation was required, and
18 because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
19 modification in the form of allowing patrons to file the FBNS by mail. See Dkt. 48-2, Facts 8-9, 27-28, 31, 49-
20 51; Dkt. 63-1, Facts 7-14; Supp. Yankee Dec., ¶¶ 3-7.

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22 47. Any of the versions of the electronic FBNS form in PDF format, which Defendants admit they
23 downloaded from their website onto the reserve kiosk for blind people in the CRO (*see* Def.'s Suppl. Statement
24 of Facts in Support of Motion for Summary Judgment ¶ 9, ECF No. 63-1), cannot be independently completed
25 by a blind person with JAWS or another screen reader even if the instructions or some elements can be read by
26 JAWS. (McCall Expert Decl., Exh. D at PL_EXPERT0003, 0013; Clark Expert Decl., Exh. B at
27 PL_EXPERT0027; Greco Decl. ¶¶ 12-13.)

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1 **Defendants' Response:**

2 47. Disputed but irrelevant. The County notes that while Plaintiff now seeks to discredit the ability
3 to complete the electronic FBNS using JAWS, she testified otherwise in her deposition. She testified that prior
4 to her March 29, 2019, visit to the CRO, which is the subject of this action, she completed the FBNS on her
5 computer at home using JAWS, and that the only aspect of the form that she could recall required human
6 assistance was signing the form. Further, “independent completion” is not the applicable standard under the
7 ADA, as exemplified by the entire basis for this action – Plaintiff’s demand for scribe services. Scribe services
8 would not entail “independent completion” because Plaintiff is explicitly demanding that someone else fill out
9 the FBNS for her. Plaintiff cannot demand scribe services, which is inherently dependent on another individual
10 transcribing information for her, and then reject electronic assistance on the ground it does not allow for
11 “independent completion,” particularly where she does not cite any authority suggesting that the ADA employs
12 such a standard. It does not. Further, while the County disagrees with Plaintiff that the FBNS on the CRO’s
13 kiosk is inaccessible using JAWS, that is ultimately irrelevant where CRO employees are authorized to and will
14 assist individuals using the kiosk.

15 For example, if JAWS is unable to read any text on the FBNS, a CRO employee will read that text to
16 the disabled individual. CRO staff members will also move the mouse/cursor to the correct line or checkbox
17 such that the disabled individual can then check the box or input the required information. In addition, CRO
18 staff members will read the information back to the individual to ensure it is accurate, and otherwise ensure the
19 FBNS has been completed properly. Further, if a disabled person would simply prefer to rely on a CRO staff
20 member’s guidance and assistance when using the kiosk, rather than using JAWS, a CRO staff member will
21 read the entire FBNS to the disabled individual, line by line, and ensure the individual is inputting the
22 information in the correct places in the FBNS. This exact situation occurred in July 2022, before the CRO had
23 obtained a license to use JAWS, when a person with a vision disability demanded scribe services relative to an
24 FBNS. She was instead able to complete the FBNS herself on the kiosk, with Mr. Yankee’s guidance and
25 sighted assistance.

26 Indeed, the only difference between this arrangement and the scribe services Plaintiff demands is that,
27 under this arrangement, the CRO’s employees would not be personally/physically completing the FBNS for the
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1 individual with a vision disability, and would thus be avoiding the significant potential liability that would arise
2 from the provision of scribe services.

3 Finally, Plaintiff's Fact No. 47 is not material or relevant where the communication between the CRO's
4 clerks and Plaintiff on the day of the incident was effective such that no accommodation was required, and
5 because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
6 modification in the form of allowing patrons to file the FBNS by mail. See Dkt. 48-2, Facts 8-9, 27-28, 31, 49-
7 51; Dkt. 63-1, Facts 7-14; Supp. Yankee Dec., ¶¶ 3-7.

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9 48. The entire process of transcribing dictated information onto an FBNS form with the CRO staff member
10 acting as a scribe took less than five minutes to complete. (Greco Decl. ¶ 9.)

11 **Defendants' Response:**

12 48. Undisputed that the process of transcribing dictated information onto an FBNS form would
13 likely not take an extensive period of time, but irrelevant. It has never been the County's argument that scribe
14 services, relative to an FBNS, would require an undue expenditure of time. Nor has the County argued that the
15 provision of scribe services, relative to the FBNS, would be difficult. Rather, the County has always
16 maintained that it is the significant potential liability that would arise from the provision of scribe services
17 which constitutes the basis for the CRO's policy prohibiting its employees from completing or altering forms
18 for patrons that are filed or recorded in the CRO. Moreover, while completing an FBNS may not take much
19 time, the implications of Plaintiff's demand for scribe services in this matter are much broader. Plaintiff is not
20 contending that only the County/CRO has an obligation to provide scribe services, or that the County/CRO
21 only has an obligation to provide such services with respect to an FBNS. Rather, Plaintiff is arguing that all
22 public entities have an obligation to provide scribe services to persons with vision disabilities on *any* forms
23 related to public services, activities, programs, and benefits. Not all such forms are as simple and brief as the
24 FBNS. Indeed, consider the potential implications if the Court were to find that the ADA requires public
25 entities to serve as a personal scribe for a person with a disability, let alone any time a disabled individual
26 demands it. Court clerks would be required to transcribe pleadings for persons with vision disabilities seeking
27 to use the courts. Government clerks would be required to do the same on public forms that are much longer
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1 and more complicated than an FBNS. Neither the ADA nor the DOJ has provided any guidance on this, likely
2 because there is simply no obligation under the ADA to provide the scribe services Plaintiff demands.

3 Moreover, Plaintiff's Fact No. 48 is not material or relevant where the communication between the
4 CRO's clerks and Plaintiff on the day of the incident was effective such that no accommodation was required,
5 and because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
6 modification in the form of allowing patrons to file the FBNS by mail. In addition, the CRO also now provides
7 persons with vision disabilities with the opportunity to complete an FBNS on a kiosk in the CRO equipped
8 with JAWS screen access software. Persons with vision disabilities may choose to rely upon JAWS to
9 complete the FBNS and/or the guidance and sighted assistance of a CRO staff member. Again, as a public
10 entity, the type of reasonable accommodation to be provided is solely within the discretion of the County.

11 *Memmer v. Marin County Cts.*, 169 F.3d 630, 634 (9th Cir. 1999); *Leine v. Cal. Dep't of Rehab.*, 205
12 F.3d 1351, *2 (9th Cir. 1999, not published); 28 C.F.R. Pt. 35, App. A § 35.160 (2011)); see Dkt. 48-2,
13 Facts 8-9, 27-28, 31, 49-51; Dkt. 63-1, Facts 7-14; Supp. Yankee Dec., ¶¶ 3-7.

14
15 49. Providing scribe services at the CRO is already readily workable, fast, and effective, as demonstrated
16 by current CRO staff's capacity to provide this auxiliary aid or service when requested by some blind people.
17 (Greco Decl. ¶ 2-11.)

18 **Defendants' Response:**

19 49. Disputed, but irrelevant. It has never been the County's argument that scribe services, relative
20 to an FBNS, would require an undue expenditure of time. Nor has the County argued that the provision of
21 scribe services, relative to the FBNS, would be difficult. Rather, the County has always maintained that it is the
22 significant potential liability that would arise from the provision of scribe services which constitutes the basis
23 for the CRO's policy prohibiting its employees from completing or altering forms for patrons that are filed or
24 recorded in the CRO. Moreover, while completing an FBNS may not take much time, the implications of
25 Plaintiff's demand for scribe services in this matter are much broader. Plaintiff is not contending that only the
26 County/CRO has an obligation to provide scribe services, or that the County/CRO only has an obligation to
27 provide such services with respect to an FBNS. Rather, Plaintiff is arguing that all public entities have an
28 obligation to provide scribe services to persons with vision disabilities on *any* forms related to public services,

1 activities, programs, and benefits. Not all such forms are as simple and brief as the FBNS. Indeed, consider the
2 potential implications if the Court were to find that the ADA requires public entities to serve as a personal
3 scribe for a person with a disability, let alone any time a disabled individual demands it. Court clerks would be
4 required to transcribe pleadings for persons with vision disabilities seeking to use the courts. Government
5 clerks would be required to do the same on public forms that are much longer and more complicated than an
6 FBNS. Neither the ADA nor the DOJ has provided any guidance on this, likely because there is simply no
7 obligation under the ADA to provide the scribe services Plaintiff demands.

8 Moreover, Plaintiff's Fact No. 49 is not material or relevant where the communication between the
9 CRO's clerks and Plaintiff on the day of the incident was effective such that no accommodation was required,
10 and because the CRO, at the time of the incident, already provided (and continues to provide) a reasonable
11 modification in the form of allowing patrons to file the FBNS by mail. In addition, the CRO also now provides
12 persons with vision disabilities with the opportunity to complete an FBNS on a kiosk in the CRO equipped
13 with JAWS screen access software. Persons with vision disabilities may choose to rely upon JAWS to
14 complete the FBNS and/or the guidance and sighted assistance of a CRO staff member. Again, as a public
15 entity, the type of reasonable accommodation to be provided is solely within the discretion of the County.
16 *Memmer*, 169 F.3d at 634; *Leine*, 205 F.3d at *2; 28 C.F.R. Pt. 35, App. A § 35.160; see Dkt. 48-2, Facts
17 8-9, 27-28, 31, 49-51; Dkt. 63-1, Facts 7-14; Supp. Yankee Dec., ¶¶ 3-7.

18 Dated: January 19, 2023

19 Respectfully submitted,
20 **ORBACH HUFF + HENDERSON LLP**

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